

REMARKS

Amendment to the Specification

A typographical error to a prior art document has been corrected at page 1. Patent EP 0 357 841 is now correctly referenced at p. 1, lines 13-18 of the English translation. Applicant submits that this was purely a clerical error, and that accordingly no new matter has been added with this amendment.

Status of the Claims

Claims 1-7 and 9-21 are pending. Claims 1, 4, 7, 10, and 18 are currently amended; claim 22 is new; and claim 8 had been previously cancelled. Reconsideration of the outstanding rejections is respectfully requested in view of the foregoing amendments and in light of these remarks.

Claim 22 has been added. Support for this claim can be found, for example, in the English translation, p. 8 lines 11-15. Accordingly no new matter has been added.

Claims 7, 9-10, and 18 were rejected under 35 U.S.C. § 112 as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter. The Examiner specifically took issue with the term “preferably” in claim 18 and the term “mainly” in claims 7 and 10. Applicant addressed these rejections by amending each of the claims to remove the terms “preferably” and “mainly.” Accordingly, claims 7, 10, and 18 as amended are believed to overcome the rejections under section 112.

Claims 1-2, 4-7, 9, 11, 13, 15-17, and 19-21 have been rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 4,658,963 to Jud. Claims 1-4, 7, 11-14, 17, and 19-20 have been rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 4,290,526 to Haiss. Claims 1-4, 7, 9-13, and 15-20 have

been rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent No. 5,934,809 to Marbler. Applicant respectfully traverses each of these rejections and requests reconsideration in light of these remarks. However, in order to facilitate prosecution and place the application in condition for allowance, Applicant has amended claim 1 to distinguish more clearly the invention over the cited prior art.

In particular, claim 1 has been amended to make clear that the amount of gas is chosen so that a consumer grasping and compressing the item causes the packaging film to be tensioned around the precut line. This change is clearly not new matter. Support for this change may be found, for example, at page 6 lines 19-35 of the English language translation.

The Examiner contends that Jud teaches an item comprising, *inter alia*, a product, a flexible film enclosing the product and an amount of gas. However, the amount of gas, if any, enclosed in the packaging film in Jud does not meet the criteria for the amount of gas set forth in claim 1 of the present disclosure. In the present disclosure, the amount of gas must be sufficient to enable a consumer to increase the pressure in the enclosure in the region of the precut line when grasping it, thereby tensioning the packaging film around the precut line. The amount of enclosed gas is sufficient to make it possible for the consumer to distend and tension sufficiently the film around the precut line under the effect of pressure increase so that a subsequent bending of the item causes an instantaneous rupture in most of the precut line.

In other words, the gas pressure must reach a sufficient level in the region of the precut line to obtain subsequently the claimed effect, e.g., instantaneous rupture of most

of the part upon bending. The claimed effect is obtained due to a “burst” effect, which is clearly not disclosed, expressly or implicitly, in any of the prior art.

The burst effect disclosed in the present application is possible under two conditions. First, the consumer must be able to trap gas with his hands in the packaging region having the precut line. The consumer must then be able to increase sufficiently the pressure of the gas trapped in the packaging region having the precut line with his or her hands so that a subsequent bending causes the instantaneous rupture of the most part of the precut line. It is respectfully submitted that none of these features are disclosed in any of the prior art.

To fulfill the conditions of the present invention, it is necessary that the quantity of gas enclosed in the packaging is not too low. See English language translation p. 6 lines 19-24 which states that “[t]he amount of gas in the enclosure is great enough that grasping the item in the hands by its longitudinal end portion causes the central section 28, which has the precut line 24 and which is left free, to distend simply under the pressure of the fingers.” Indeed, if the quantity of gas is too low, the consumer will not be able to sufficiently increase the gas pressure in the packaging precut region upon grasping. Moreover, the consumer would not be able to trap the gas in his or her hands in the packaging region of the precut line.

This latter difficulty is even more true if the consumer cannot tightly surround a full perimeter of the packaging with the fingers of one hand in the region adjacent to the precut line, as is the case in the cited prior art.

Further, the quantity of gas required depends also on the length of the precut line, on the mechanical resistance provided by the film along the precut line (see English

translation of the description p. 7, l. 29-32) and on the ability of the film to stretch or not to stretch.

The figures of Haiss, Jud and Marbler, teach packaging that is tightly wrapped against the packaged product. In contrast, p. 6, l. 6-12 of the English translation of the present disclosure requires an amount of gas so that the products can only be "partially made out under the flexible film 4." This necessarily teaches a greater amount of gas with respect to the cited prior art.

Thus, the prior art teaches the amount of enclosed gas is very low. Such amount of gas in the prior art is clearly not enough to make it possible for a consumer to grasp the item so as to increase the gas pressure in the region of the precut line to the extent that a simple bending would open instantaneously along the most part of the precut line. In fact, the consumer would not even be able to trap gas around the precut line in view of the fact the precut line is located in a region where the products are tightly wrapped. Further, the design of the packaging would not allow a consumer to use two hands to trap gas in a region around the precut line.

Although Jud discloses that bending of the item opens the precut line, it is pointed out that the cited art never provides a "burst" effect upon bending. A sufficient gas pressure in the packaging precut region cannot be provided. As a consequence, the precut line will not open instantaneously along the most part of the precut line as in the disclosure provided by Applicant.

None of the prior art references, alone or in combination, teach a packaging design that facilitates opening in the manner described and claimed in the present


application. Reconsideration and withdrawal of the pending prior art rejections, in view of the foregoing remarks and amendments, are therefore respectfully requested.

CONCLUSION

Applicant respectfully submits that each of the rejections raised in the March 24, 2004 Office Action has been addressed and that the application is now in condition for allowance.

Applicant's undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should be directed to our below listed address.

Respectfully submitted,


Raymond R. Mandra
Attorney for Applicants
Registration No. 34,382

FITZPATRICK, CELLA,
HARPER & SCINTO
30 Rockefeller Plaza
New York, New York 10112-3801
Facsimile: (212) 218-2200